

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2765

REVIEW REPORT
OF

CLERK OF THE INDIANA SUPREME COURT,
COURT OF APPEALS, AND TAX COURT
STATE OF INDIANA

July 8, 2003 to May 31, 2006



FILED
09/27/2006

TABLE OF CONTENTS

| <u>Description</u> | <u>Page</u> |
|---------------------------------------|-------------|
| Agency Officials..... | 2 |
| Independent Accountant's Report | 3 |
| Review Comments: | |
| Deposit of Public Funds..... | 4 |
| Accounting Records..... | 4 |
| Exit Conference..... | 5 |
| Official Response | 6-8 |

AGENCY OFFICIALS

| <u>Office</u> | <u>Official</u> | <u>Term</u> |
|---|--|--|
| Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court | Colleen McNenny Shere (Interim) David Lewis Kevin S. Smith | 07-08-03 to 11-23-03 11-24-03 to 02-12-06 02-13-06 to 06-30-07 |



STATE OF INDIANA

AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2765

Telephone: (317) 232-2513
Fax: (317) 232-4711
Web Site: www.in.gov/sboa

INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE CLERK OF THE INDIANA SUPREME COURT, COURT OF APPEALS, AND TAX COURT

We have reviewed the receipts, disbursements, and assets of the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court for the period of July 8, 2003 to May 31, 2006. The Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court's management is responsible for the receipts, disbursements, and assets.

Our review was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. A review is substantially less in scope than an examination, the objective of which is the expression of an opinion on the receipts, disbursements, and assets. Accordingly, we do not express such an opinion.

Financial transactions of this office are included in the scope of our audits of the State of Indiana as reflected in the Indiana Comprehensive Annual Financial Reports.

Based on our review, nothing came to our attention that caused us to believe that the receipts, disbursements, and assets of the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court are not in all material respects in conformity with the criteria set forth in the Accounting and Uniform Compliance Guidelines Manual for State Agencies, and applicable laws and regulations except as stated in the review comments.

STATE BOARD OF ACCOUNTS

June 28, 2006

CLERK OF THE INDIANA SUPREME COURT,
COURT OF APPEALS, AND TAX COURT
REVIEW COMMENTS
May 31, 2006

DEPOSIT OF PUBLIC FUNDS

As stated in our prior report (B21447), Pursuant to Indiana Admissions Rule 23, Section 21(f), the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court collects funds on behalf of the Disciplinary Commission and the Continuing Legal Education Fund. These funds are deposited in a bank account titled "Clerk of the Courts - Annual Fees." These funds are forwarded to the Disciplinary Commission and the Continuing Legal Education Fund. We found no statutory authority for the Clerk to deposit public funds in a bank account without authorization from the Treasurer of State. The Interim Clerk responded to this comment by citing Rule 23, Section 21 (h) of the Indiana Rules of Admission and Discipline and a May 25, 1995, Indiana Supreme Court order "*In the Matter of the Management of the Indiana Supreme Court Disciplinary Commission and the Continuing Legal Education Fund*," cause number 94S00-9505-MS-599 as their authority to maintain these funds outside of the state system. While we agree these cites establish the authority to collect and administer these funds, we do not agree with the premise that these funds may be maintained outside of the state system.

Indiana Code 5-13-6-1(b) states in part: ". . . all public funds collected by state officers, other than the treasurer of state, shall be deposited with the treasurer of state, or an approved depository selected by the treasurer of state not later than the business day following the receipt of the funds."

Indiana Code 5-13-4-20 states in part: "'Public funds' means all fees and funds of whatever kind of character coming into the possession of any public officer by virtue of that office . . ."

Each agency, department, institution or office is responsible for compliance with applicable statutes, regulations, contract provisions, state policies, and federal requirements. (Accounting and Uniform Compliance Guidelines Manual for State Agencies, Chapter 1)

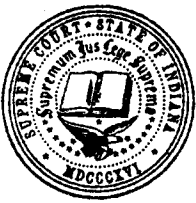
ACCOUNTING RECORDS

As stated in our prior two reports (B21447 and B16984) the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court's accounting records for the Attorney's Annual Fees are not reconciled with the bank statement.

Each agency is responsible for maintaining an effective and accurate accounting system for subsidiary and supplementary records. At all times, the agency's manual and computerized records, subsidiary ledgers, control ledger, and reconciled bank or Auditor's balance should agree. If reconciled bank or Auditor's balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance. (Accounting and Uniform Compliance Guidelines Manual for State Agencies, Chapter 1)

CLERK OF THE INDIANA SUPREME COURT,
COURT OF APPEALS, AND TAX COURT
EXIT CONFERENCE

The contents of this report were discussed on August 10, 2006, with Kevin R. Smith, Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court; and David R. Schanker, Deputy Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court. The official response has been made a part of this report and may be found on pages 6 through 8.



CLERK

SUPREME COURT, COURT OF APPEALS, AND TAX COURT STATE OF INDIANA

Kevin S. Smith
Clerk

OFFICIAL RESPONSE TO AUDIT

September 19, 2006.

Bruce A. Hartman
State Examiner
State Board of Accounts
302 West Washington Street, Rm. E418
Indianapolis, Indiana 46204-2738

Dear Mr. Hartman:

This letter is the official response of the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court to the State Board of Account's *Audit Results and Comments* as of May 31, 2006. We wish to thank Mr. Dan Heilman, State Board of Accounts Field Examiner, for his professionalism in handling this audit. His review has proven helpful in planning for future accounting matters facing the Clerk's Office. We also thank the State Board of Accounts for the extension of time that has allowed us to provide this response.

Our official response to the *Audit Results and Comments* is as follows:

DEPOSIT OF PUBLIC FUNDS

The State Board of Accounts cites the Clerk's Office for its maintenance of a bank account for the deposit and distribution of attorney annual registration fees without authorization from the Treasurer of State. The field examiner based his finding upon the provisions of Indiana Code 5-13-6-1(b) and 5-13-4-30. As noted in our responses to the State Board of Accounts' 2003 audit results, when the same objection was made, the maintenance of the annual fees account is authorized by a 1995 Order of the Indiana Supreme Court, by the Indiana Rules of Admission and Discipline, and by the Indiana Constitution. Moreover, prior to 2003, the maintenance of the account (which has been in existence since 1971) was not called into question in audits going back at least to 1986.

Indiana Supreme Court Order. On May 25, 1995, the Indiana Supreme Court issued an order in the case styled *In the Matter of the Management of the Indiana Supreme Court Disciplinary Commission and the Continuing Legal Education Fund*, Cause Number 94S00-9505-MS-599, concerning Indiana Admission and Discipline Rule 23. The Court ordered, *inter alia*, as follows:

1. The Clerk of the Supreme Court shall maintain a suitable account in a financial institution for the exclusive purpose of holding the combined fee payments and any

217 STATE HOUSE, INDIANAPOLIS, IN 46204

TEL: 317-232-1930 • FAX: 317-232-8365 • E-MAIL: CLERK@COURTS.STATE.IN.US

penalties thereon that are made annually by Indiana attorneys pursuant to Admission and Discipline Rule 23, Section 21 and Admission and Discipline Rule 29, Section 7 (hereinafter "the combined account"). The Clerk shall administer this account as follows:

- a. The Clerk shall maintain the checkbook and account records for the deposit of funds into and the disbursement of funds from the combined account.
- b. The Clerk shall have signature authority over the combined account.
- c. The Clerk shall maintain all financial records relating to the combined account and shall report on the status of the combined account from time-to-time to the Executive Secretary of the Disciplinary Commission and the Executive Secretary of the Commission for Continuing Legal Education.
- d. The Clerk shall collect attorney annual fee payments and promptly deposit the same into the combined account.
- e. The Clerk shall keep accurate and timely records of the identity of funds in the combined account and shall promptly disburse from the combined account to the Disciplinary Commission and the Commission for Continuing Legal Education all funds to which each agency is entitled.

This Order governs the Clerk's Office's procedures for collecting and disbursing funds collected as attorney fees, and the Clerk has performed his responsibilities as required by this Order.

Admission and Discipline Rule. Pursuant to Rule 23, Section 21 of the Indiana Rules of Admission and Discipline, the Clerk is required to collect the Annual Fees paid by all active and inactive Indiana attorneys. Under Section 21(h), the Clerk must deposit these funds in a special account to be maintained by the Clerk and designated "Clerk of the Courts—Annual Fees." As collected, the Clerk shall thereafter issue those funds to the Disciplinary Commission, and the Executive Secretary shall cause the same to be deposited into a special account designated "Supreme Court Disciplinary Commission Fund." Ind. Admission Rule 23, Sect. 21(h). The Clerk is directed similarly to collect a fee to be paid to the Commission for Continuing Legal Education under Ind. Admission Rule 29, Section 7.

Our procedure for collecting and disbursing funds is consistent with this mandate. To our knowledge, these funds have never been deposited with the Treasurer of State or disbursed from a state account.

Indiana Constitution. In addition, the Indiana Constitution vests the power over admission and discipline of attorneys exclusively with the Supreme Court. Art. 7, Sect. 4. The funds collected by the Clerk's Office for Annual Fees are under the exclusive control of the judicial branch, and, as such, we maintain respectfully that the doctrine of separation of powers permits us to continue to process the Annual Fees without depositing them in a state account.

Prior Audits. Finally, we have examined the Audit Reports for the Clerk's Office from 1986 to the present, and these reports show that no objection to the maintenance of the annual fees account was made prior to 2003. This long-standing acceptance of the Clerk's Office's practice of maintaining the account outside the state system weighs heavily against dismantling, at this late date, a well-established means of collecting and distributing attorney fees.

ACCOUNTING RECORDS

The State Board of Accounts also cited the Clerk's Office for its failure to reconcile its accounting records for attorneys' annual fees receipt with the bank statements. The Clerk's Office maintains an electronic ledger for receipts of the Attorneys' Annual Fees and for the disbursement of funds to the Supreme Court Disciplinary Commission and the CLE Commission. In the past, bank statements for the Annual Fees account have been reviewed to ensure that all transactions are reflected, but no formal reconciliation has been performed. We plan, however, to implement the field examiner's directive that reconciliations be performed regularly.

If you have any questions or concerns, please do not hesitate to contact me or the Deputy Clerk, David Schanker, at 233-1976.

Sincerely,



Kevin S. Smith
Clerk of the Indiana Supreme Court, Court of
Appeals, and Tax Court